

Courtesy translation

Please find attached the opinion of the European Union Affairs Committee of the Senate of the Republic of Poland on the proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment - COM(2010)379, Council number 12208/10.

/-/ Bogdan Borusewicz

Encl.

OPINION
of the European Union Affairs Committee of the Senate of the Republic of Poland
on a proposal of a directive of the European Parliament and of the Council on the
conditions of entry and residence of third-country nationals for the purposes of seasonal
employment
COM(2010)379

The aim of this directive proposal is to determine the conditions of entry of non-Member State citizens to one of the Member States as seasonal workers and the terms of their residence and their rights.

The role of seasonal workers significantly differs across Member States. The directive does not provide for any additional mechanisms that would provide better protection against inflow of third-country illegal workforce to Member States. However, additional obligations imposed on employers according to the directive proposal might discourage them from hiring third-country seasonal workers legally.

The proposed regulations are solely limited to issuing residence permits for individual Member States. Such permits would not authorize residence in other Member States. In addition, the proposed directive provisions will not in any way regulate Member States' cooperation regarding issuing permits for seasonal workers. Therefore, there is no supranational element in the said directive.

Member States differ significantly in terms of the role played in their economies by third-country seasonal workers. Since the European Union regulations do not provide for freedom of movement of third-country workers between Member States, while permits are issued by Member State authorities for an individual country only, there is no need to harmonize the regulations regarding issuing seasonal work permits.

The proposal does not only provide for permit granting but also regulates the terms of residence of seasonal workers employed in a host country. The issue does not affect the European Union safety or inflow of illegal immigration. In addition, too heavy a burden placed on employers combined with low flexibility of the planned regulations may contribute to increased illegal labour migration to Member States, thus achieving a result contrary to what was originally intended.

An example of such excessively restrictive provision is Article 5, which obligates the employer to present a contract or binding job offer specifying an hourly rate earned in a month or a week. Such solution is inflexible, as it does not allow the employee and the employer to agree on task-based working time or piecework.

Another example is Article 14, which obligates the employer to present proof of accommodation of appropriate standard arranged for the employee. Such obligation is more restrictive than that applicable to local workforce or workers from other Member States, where no employer is obligated to arrange for appropriate accommodation for its employees or to make sure that their rent is not too high compared to their wages.

Due to the above, the European Union Affairs Committee of the Senate of the Republic of Poland issues a negative opinion on the planned directive. Moreover, in the opinion of the European Union Affairs Committee of the Senate of the Republic of Poland, the proposed directive is not compliant with the subsidiarity principle referred to in Article 5 clause 3 of the Treaty on European Union.